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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

Reference: Operation E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 25 MAY, 2018

AT 10.30AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: We have Mr [REDACTED] here this morning. Is Mr [REDACTED] represented?

MR DUGGAN: I don't believe he is, Commissioner.

THE COMMISSIONER: Maybe not. Okay. Will you take an oath or an affirmation?

MR [REDACTED] Oh, oath, whatever.

10

THE COMMISSIONER: Okay.

MR [REDACTED] I'm not really religious, I don't - - -

THE COMMISSIONER: Well, take an affirmation then.

MR [REDACTED] All right. Sorry.

THE COMMISSIONER: That's okay.

< [REDACTED] affirmed

[10.38am]

THE COMMISSIONER: Now, you've been called before the Commission to give evidence and as you're unrepresented I want to explain to you what your obligations are and what your rights are. As a witness, Mr [REDACTED], you must answer all questions truthfully - - -?---Yeah.

10 - - - and you must produce any item described in your summons, and I don't think there were any, or if I require you to produce something during the course of your evidence. You can object to answering a question or producing an item and the effect of any objection is that although you must still answer the question or produce any item that I've asked you to produce, your answer or the item produced cannot be used against you in any civil proceedings, or subject to one exception in your case, in any criminal proceedings. The process of objecting to answers doesn't prevent your evidence from being used against you in a prosecution for an offence against the ICAC Act, and most importantly, is an offence of giving false or misleading evidence. So you don't get any protection if you give false or
20 misleading evidence. And the penalty for giving false or misleading evidence down here can be imprisonment for up to five years. So it's serious and I'm sure that you wouldn't want that to happen.---Mmm.

Now, I can make a declaration to give you that protection so you don't have to keep objecting to questions before you answer them. Would you like me to make such a declaration for your protection?---Oh, yeah.

30 Yes. All right. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

40 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Now, the effect of that is you're protected so long as you tell the truth.---Yeah.

All right. Mr Duggan.

MR DUGGAN: Thank you, Commissioner.

Before we commence with the evidence of Mr [REDACTED], can I tender a document entitled Inmate Profile Document relating to Mr [REDACTED].

THE COMMISSIONER: Yes.

10

MR DUGGAN: And can I also seek a section 112 suppression order. In my submission it's in the public interest, given the nature of the material contained in the profile document, that a suppression order be made. I should also indicate that legal counsel have been provided with a copy of this.

THE COMMISSIONER: All right. So the intent is that legal counsel can have access to it for the purpose of asking questions but otherwise it's to go no further?

20

MR DUGGAN: Yes. So there may be some questions relating to credit or otherwise that arise out of it.

THE COMMISSIONER: Certainly. I notice Mr Brasch is on his feet.

MR BRASCH: Thank you. Excuse me, Commissioner. I had been under the impression that the document wasn't to be tendered, it had been redacted, but it would be distributed to the parties with some redactions, for reasons that there may be material relevant to credibility and appropriate for it to be distributed. I guess, Commissioner, I ask whether it is necessary for it to be tendered as such, even with an order pursuant to section 112.

30

MR DUGGAN: Commissioner, can I indicate this. The main reason for tendering it was really in case anyone wanted to ask questions about it. I'm happy to withhold the tender at this stage and tender it at some later stage if it - - -

THE COMMISSIONER: Well, yes. It may be, Mr Brasch, that nobody considers this to be particularly relevant, but because of the new guidelines that have been published under section 31B I want to err on the side of caution and there may be people who think there's something in here that is relevant to the witness's credit, but I'm happy if it assists you to have the copies returned from the legal representatives, and I don't think it really is necessary to have it marked up, anything other than say a confidential exhibit so that it's not distributed at large.

40

MR DUGGAN: Yes, that's my only concern, that now people have it there needs to be some confidentiality regime, yes.

THE COMMISSIONER: Yes. All right. Does that suit you?

MR BRASCH: It does, yes, thank you.

THE COMMISSIONER: Okay. Thank you. Well, just bear with me for the moment. Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988 that other than to counsel
10 representing witnesses before this public inquiry, the inmate profile of Mr [REDACTED] shall not be published except by Commission officers for statutory purposes or pursuant to any further order that I may make.

**BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 THAT OTHER THAN TO COUNSEL REPRESENTING WITNESSES BEFORE THIS PUBLIC INQUIRY,
20 THE INMATE PROFILE OF MR [REDACTED] SHALL NOT BE PUBLISHED EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO ANY FURTHER ORDER THAT I MAY MAKE.**

THE COMMISSIONER: Is that sufficient? It hasn't been tendered as an exhibit yet. What I'll do is, I'll defer that I think until we see what happens. You don't have to worry, Mr [REDACTED], that your inmate profile will be
30 distributed beyond this room and when you've given your evidence I'll make a further suppression order if need be that ensures that no one is ever going to see this.---Yeah.

All right.

MR DUGGAN: Mr [REDACTED], you understand that you're here today to be asked some questions about what happened in February 2014 in Lithgow Correctional Centre?---Yeah.

Do you have any concerns about giving evidence?---Oh, a little bit, yeah,
40 for my safety.

Are you able to say why you have those concerns?---Oh, the past, last, last night [REDACTED] for one and two, over the last two, three days I've had (SIMULATES KNOCKING) "Lithgow says hello," (SIMULATES KNOCKING) "Lithgow says hello," on my cell door.

So, you currently have a [REDACTED] in your cell?---Yeah, yeah.

Are you in a one-man cell?---No, four-out.

Four-out cell.---Yep.

[REDACTED]

[REDACTED] - - -?---Yeah.
In the, in the cell at Lithgow, prior, a couple of seconds prior, before the
actual incident happened. [REDACTED]

10

All right. Now, you refer to a knock on the door?---Yeah. My cell door,
like, on the outside. I can't see who it is or, but it was about half an hour
later and it happened the night before too, "Lithgow says hello, Lithgow
says hello."

All right. So, you said that it happened half an hour later, you mean after - -
-?---[REDACTED].

20 All right. But it has also happened the night before, did you say?---The
night before, yeah.

And do you know who, did you recognise the voice?---No.

But I assume it was a Correctives officer?---It can only be officers. It's 8
o'clock at night. No, no inmates are out.

THE COMMISSIONER: No inmates are out?---No inmates are out.

30 MR DUGGAN: Is there any other event that has caused you concern about
giving evidence today?---No.

I assume that the knocking on the door and, "Lithgow says hello,"
comments have only occurred this week or are they - - -?---This week, yeah.

All right.

40 THE COMMISSIONER: Can I just say that if that's happened I am very,
very concerned. As I made clear, particularly to Corrections the other day,
if there is any interference with witnesses who are inmates that come before
this Commissioner and we find out about it, the consequences are going to
be very, very serious. And, Mr [REDACTED] if anything like that happens again,
I'd like you to tell us.---Yep.

MR BRASCH: Can I inform the Commissioner that this information has
been conveyed to an assisting Commissioner who I am assured has been
taking steps, action immediately in relation to this.

THE COMMISSIONER: I mean, because it's outrageous if it's happened. It really is. I mean there are very serious offences under the Act for intimidating witnesses and these witnesses, as we know, and as I said yesterday, although many of them have committed very serious criminal offences, they are vulnerable and the Commission will not tolerate any form of repercussion because they are here assisting the Commission. Is that well understood?

MR BRASCH: Yes.

10

THE COMMISSIONER: Thank you. Thank you, Mr Duggan.

MR DUGGAN: Commissioner, one, one thing has just occurred to me, Mr [REDACTED] has given some evidence about the [REDACTED]

[REDACTED] My concern is that, given Mr [REDACTED]

20

THE COMMISSIONER: Well, I mean, I thought I made a suppression order the other day that these inmates were not to be identified and they were both specifically named, [REDACTED] I agree with you that we should make an order that Mr [REDACTED] shouldn't be published. So, being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988 that the evidence that this witness has given, [REDACTED] will not be published except by Commission staff for statutory purposes.

30

BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 THAT THE EVIDENCE THAT THIS WITNESS HAS GIVEN, DESCRIBING THE FACT [REDACTED] WILL NOT BE PUBLISHED EXCEPT BY COMMISSION STAFF FOR STATUTORY PURPOSES.

40

THE COMMISSIONER: Thank you.

MR DUGGAN: Thank you, Commissioner. Mr [REDACTED] just to clarify things. You're not currently in Lithgow Correctional Centre, are you?---No.

I don't need to know where you are, but now, you were in Lithgow Correctional Centre in 2014?---Yep.

And I think you were in the main gaol, were you, in late 2013. Is that right?---Yeah.

And how long were you in the main gaol for before moving into segregation?---Oh, I can't say like, the exact time but a couple of months, like, maybe five months.

10

All right. And are you an asthmatic - - -?---Yeah.

- - - Mr [REDACTED] Yeah.

Do you usually carry a puffer?---A Ventolin with me, yeah.

All right. And is that the blue/grey or the - - -?---The blue one.

- - - blue and the dark blue - - -?---The blue one with the dark blue lid.

20

And when you were in segregation in 2014 at Lithgow did you have a puffer in your cell?---Yeah, I did.

Just the one?---Yeah.

Where did you usually keep that puffer?---In, in my tub.

In your tub?---Yeah, in my tub, like, under the bed.

30 THE COMMISSIONER: That's where you keep your personal belongings, is it?---Yeah, in a plastic tub.

MR DUGGAN: All right. So you were moved to segregation in February 2014. Does that sound about right?---Yeah.

And you were moved into a cell with [REDACTED] Do you recall that? ---Yeah.

40 Did you know his surname?---Not when I first moved in but, like, when we got to know each other, yeah.

Do you know him as [REDACTED] or how do you refer to him?---Oh, just [REDACTED]

All right. Now, when you were sharing a cell with [REDACTED] it was a two-out cell, wasn't it?---Yeah.

And it had a double bunk bed?---Yeah.

Were you on the top bunk or the bottom bunk, do you recall?---Top.

You were on the top?---I was on the top.

And was there an intercom located in the cell?---Yeah.

And do you recall where it was located?---Like, in between the bottom and the top, just above [REDACTED] head, I think, that I can recall.

10 All right. And also in the cell was a shelf. Is that right?---Yeah.

And there was a toilet and sink towards the back of the cell?---Yeah.

And a shower in the - - -?---Yeah.

- - - back left corner as you walk into the cell. Is that right?---Yeah, behind the beds, yeah.

20 When you first moved into the segregation cell with [REDACTED] was there a television in the cell?---Yeah, there was, but it didn't work or one channel worked or something, like, yeah.

Now, I want to ask you about the incident on 19 February, 2014. Was the intercom used at all that morning?---Yeah, it was.

Do you call it the knock-up system?---Yeah.

And so who used the knock-up system that morning?---I did.

30 And roughly what time would this have been in the morning?---Anywhere between 8.00 and 10.00, like, I can't, 'cause we didn't know the time but it was around then.

Were you still in bed, were you up around, do you remember what you were doing?---I was, I was still in bed.

All right. And so you pressed the knock-up button, did you?---Yeah.

40 And what did you say when you pressed the knock-up button? I withdraw that. Did anyone answer when you rang the knock-up button?---Yeah, someone answered, it was a male voice. I didn't know who at the time, and I said, "Chief," I said, "Is there any chance," I said, "We can get a TV?" I said, "Me cellmate's been here for," a month or something he'd been in there he told me, I said, "We don't carry on like the rest of the people in the pod were carrying out, putting youse on show," and like, I said, "TV doesn't work, we've got one channel, is there any chance we can get a TV?" And um, I said to him about me cellmate, "He's been in here for a month," I said, "We don't put, like, we don't carry on, yell out, kick doors and that like the

rest of the inmates,” I said, “We’re not putting youse on show like fuckin’, like, sorry, scream like fuckin’ idiots,” and like, we got some response like, fuck, rah, rah, rah, and then they hung up and next minute the door opened and officers ran in.

All right.

THE COMMISSIONER: Did you know who you were talking to?---No.

10 MR DUGGAN: Now, is it fair to say you were a bit frustrated when you made the call?---Not really. I just woke up. I was polite. I was so polite. I thought I was being polite.

And just try and think carefully about the response. Was the response polite or calm or - - -?---No, it was aggressive.

And do you remember the words that were said?---Not, not a hundred per cent. No. But it was something, “Fucking,” something, “Fucking, do you know who you're talking to?” Or something,

20

So did you say, “Do you know who you're talking to?---“Fucking talking to,” yeah.

Did you know whereabouts the knock-up button would ring out - - -?---No. No. It goes all over the gaol. It can go to the main office or it can go to, part of my understanding is, it can go to reception.

All right. So you didn't recognise the voice?---No.

30 And you didn't have a particular understanding as to the person who might answer usually? It could have been different people?---Yeah, it could have, yeah.

So, when the person said, “Do you know who you're talking to?” did you answer that question?---Oh, I didn't get time. They just hung up.

Now you've mentioned that, in what you said over the intercom or the knock-up system, you mentioned a television.---(No Audible Reply)

40 And you've just nodded your answer.---Yeah, sorry.

So, your evidence is that there was a television but it didn't work or there was only one channel?---Yep.

Now, I'm not sure whether you identified in the course of your answer, but was the person who said, “Do you know who you're talking to?” was it a male voice or a female voice?---Male.

Male voice. Excuse me one moment, Commissioner.

THE COMMISSIONER: Yes, fine.

MR DUGGAN: Mr [REDACTED] this is not the first time you've given evidence about this incident?---No.

Do you recall earlier this year, you had what's called a compulsory examination?---Yeah.

10

And you were asked some questions about this incident?---Yep.

And you answered those questions truthfully, did you?---Yeah.

And someone told you that, if you didn't answer truthfully you'd get into trouble?---Yep.

And you also were interviewed in 2015 by some Corrective Services officers as well?---That's right.

20

Can I take you to some of the evidence you gave in your compulsory examination in March this year, at page 265?

THE COMMISSIONER: The transcript will come up on the screen.

THE WITNESS: Yep.

MR DUGGAN: So, on the bottom of page 265, you've been asked some questions about the knock-up called and you were asked in the last couple of lines, "Do you remember who answered or who you spoke to on the other side?" And you answered, "No, no, it was a male officer. I know that and he was pretty pissed off." Do you see that?---Yep.

30

So do you stand by that evidence?---Yeah.

So you've just nodded. You have to say - - ?---Oh, yeah, yeah.

Thank you. Now, if I can take you – sorry, before I do, before I go over the page, is there anything else you remember about what was said in the conversation with the person on the knock-up system?---No, just basically what I said.

40

All right.---What I've told you.

If we can go over the page, please, to 266. Now, you used a word earlier, "chief".---Chief, yeah.

Is that a catch-all for all correctional officers or - - ?---Yeah.

Now, here if you look down the page to about – do you see the number 10 on the left-hand side of the page?---Yeah, yeah.

Just a little bit below that you're asked some questions about this conversation that you had, and you were asked, "Well, did he tell you to shut up? Did he tell you he'd come and bring a TV? How did you know he was pissed off?"---His voice.

10 Sorry, I'll just - - -?---Oh, sorry.

I'll take you through it slowly. And your answer on that day was, "He said, um, like, he was, the tone of his voice was like it was aggravated." So you'd agree with that?---Yeah. Yeah.

"And he didn't, I think he said something like, 'The, it's the piper,'" which is a senior officer, "and he just hung up."---Yeah.

20 Do you stand by that evidence?---Yeah.

So do you have some recollection of a phrase being used "It's the piper"? ---Yeah, it was like, "Do you know who the fuck this is? It's the piper."

And what do you understand the piper to be?---Like, with stars on your shoulder.

30 Now, you'll see if you look at the transcript, this is near where the 20 is on the left-hand side of the page, the Commissioner has wanted to clarify that and said, "Sorry, say again. It's the?" and you said, "The piper, like the senior officer." And then Ms Clifton has asked you some questions. And she asks, "So you've got the normal Corrective Services officers who you see every day, who are in the meal room?" "Yes." "Take you out for exercises. But a piper refers to the?" and you say, "The star."---Star, yeah.

40 Yes. And you go on, "The stars on their shoulder pads. They're the ones, like, that are in charge. Is that right?" "Yes, that's right." "So you think this person who answered said, 'It's the piper'?" And you say, "Yes, no, 'You're speaking to the piper' or like." So does that mean that you stand by that evidence and that's correct?---Yeah, yeah.

Do you remember anything being said about a lock-in day at the time?---No, I found out, I don't know, I can't recall exactly but we did find out later that something happened, something had occurred, like, in the gaol, in the mainstream in the gaol, and that's probably why the officer was aggravated or something. I don't know. I still don't know to this day what happened.

So the intercom has hung up or the line goes dead, is that right?---Yeah, yeah.

And you're sitting in your cell. There are two doors, a solid door and a grille door.---Yeah.

Are both closed when you make the knock-up call?---Yeah.

And are you able to see out into the hallway outside?---From, if I jump up on my bed and look through the top of the grille, I can. Like, on top of the doors is, like, it looks like these (not transcribable)

10

Oh, okay. There's a bit you can see through the top?---But with a lot smaller holes, obviously.

All right. Did you - - ?---Yeah, I didn't do that at the start.

So what's the next thing after having this phone call? What's the next thing that happens?---A female officer opened the door. There's a window in the middle of the door and it come open. Female officer opened the door and that's, we couldn't see any other officers. We later found out that there was
20 officers to the left and right. And once the door come open, the grille come open and male officers ran through, dragged me off the top bunk, put me to the right or left of the cell – right, maybe, don't know – up against the wall, told me not to move, hands up against my head, against the wall and, and I just heard, crash, bang, “Oh, wasn't me,” bang. And, yeah, and then they carried my cellmate away with a black eye.

THE COMMISSIONER: Who was saying, “It wasn't me, it wasn't me?”
---My cellmate, [REDACTED]

30 Okay.

MR DUGGAN: All right. We might just, there's a lot of information you've just given us so we might just - - ?---Yeah.

- - - go through it a bit more slowly. So you said that someone was looking through the door to start with.---Yeah, I was, I, like, we seen through the door when they opened the door (not transcribable)

40 I'm just going to show you some photos if I can - - ?---Yeah.

- - - which might make it a little bit easier. It's Exhibit 51 at page 10, please. So you see two doors there, one open on the left with cell 208 and the other one door closed on 209. So does that look to you like the cell you were in?---That's the cell.

And do you see there there's, on the door that's closed there's a little flap?
---Yeah, that's what I meant before, a little flap on there.

And there's, on the door that's open you can see that the flap might be open
-- -?---Yeah.

-- - and there's a little window there?---Yeah.

So when you say that there was a female officer, did you see her through the
flap, did you?---Yeah.

10 Do you know the name of that female officer?---Ms Jane.

Ms Jane.---That's what they call her, yeah.

All right. And so did anyone speak to you before opening the solid door?
---No.

So it was just someone looking in to see -- -?---Well, she opened the door.
I, it was her opened the door, the big door, and she stepped back.

20 All right. And then I assume the grille door was secured?---Yeah.

So did anyone talk to you before the grille door was open?---No.

What could you, what could you see?---Just Ms Jane.

All right. So that was initially when she opened the door?---Yeah.

30 Could you see out into the hallway from your position?---From that way I
could, to the right from where, from where we're looking at the door, I
could see, like, to the right a little bit.

Was she the only person out in the hallway?---That I could see, yeah.

Was she the only person out -- -?---That I could see, yeah.

That you could see. Sorry.

THE COMMISSIONER: You were still in bed at this stage?---Yeah, on
the top bunk.

40 MR DUGGAN: Did you say anything to [REDACTED] at this point?---Not that I can
remember, I don't think so.

Did you think they might be coming down with a television?---Well, I
honestly don't know. Maybe, yeah. I honestly don't know why they, like,
what I remembered, what I, what I was thinking.

All right. Did you have any conversation with Ms Jane before the grille
door was open?---No.

So what happened next, was the grille door then opened?---Yep, and male, three or four male officers rushed through and dragged me off, two dragged me off the top bunk.

And just pausing there, was there anything you remember about their uniform?---Yeah, they were squad, they had the black vests.

10 Right. So you call them the squad, do you?---Yeah, that's it.

And they had black vests?---Yeah.

And were they tall, short, do you remember?---Tall, tall.

Right. And so you said – how many did you say came in?---Three or four.

Right.---Might be three squad and one like, normal officer, like (not transcribable)

20 All right. So what, one dressed perhaps with a light blue shirt and dark blue pants?---Yeah. And the others with the black vestas.

All right. And were they all male or were there some females?---They were all male that I can recall.

And so, you were taken down off the bed, I think you said.---Yep.

30 Were you able to see where Mr [REDACTED] was, where [REDACTED] was?---He was up the back. He was training.

And what happened to him, if anything?---He got bashed.

But did you see that?---No but I could hear it.

40 THE COMMISSIONER: What did you hear?---“It wasn't me, it wasn't me.” And I could hear like, crash banging in the cell and, “I didn't say it, chief, I didn't say it.” And my, my head's up against the wall, mind you, next to the door on the left. I was told, on my hands and knees and don't like, put my forehead against the wall and don't move. And I could hear, “It wasn't me, it wasn't me. I didn't say it.” Crash, bang and I got a sneaky look when they were dragging him out, like, that, over towards (not transcribable) and I could see a black eye. And he come back in the cell later that afternoon with a black eye and fat lips and, and then they brought a TV.

MR DUGGAN: Who brought the TV?---The officers, later that night, when he got back from hospital.

Were they the squad or normal?---Normal.

And you've identified the name of the female officer. Did you know the name of any other officers?---They called him Tex Walker, Mr Walker. Tex.

All right. And which, which one was he? What did you see - - -?---Oh, he's the old one in the squad. He seemed, he seemed to be in charge. I don't know if he was to not but he seemed to be.

10

Do you know the names of the people who brought you TV, the person? ---No.

Did you recognise them?---Yeah. Just from the, the gaol.

Were they, were they junior officers or senior officers?---Well, they weren't pippers but they had a couple of stripes. One, one or two stripes. I don't know that they mean or nothing but - - -

20 Did they say why they were bringing the TV?---No.

Did you get anything else or was it just the TV?---No. It was just the TV.

THE COMMISSIONER: Are you a smoker?---No, not now at all.

Were you then?---Yeah.

Did you smoke White Ox?---Yeah.

30 Did anyone bring some White Ox that day, do you remember?---No.

MR DUGGAN: So, just looking at this photo again, Mr [REDACTED] you said that your head was up against the wall, are you talking about the space between cell 207 and 208?---Yep.

I mean, if it's not on this photo, let me know but that's where you say you were?---Yep.

40 And were you standing up or were you kneeling down?---Kneeling, on my hands and knees, with my hands behind my head.

So you've been taken off the bunk?---Yep. Dragged out.

And put there and from that position you were able to hear, "It wasn't me," and some thuds?---Yep.

Did you hear the officers in the cell saying anything?---I, I can't really remember. Maybe, I don't know. Maybe swearing, I don't know. It was all very fast and it was - - -

Now, you've mentioned the squad and some regular officers and - - -?---Oh, yeah. They said, "Tell your mum to stop ringing the gaol." That's exactly what I remember now. "Tell your mum to stop fucking ringing the gaol."

To you?---No, to [REDACTED]

10

And in terms of the people who were there when you came out of the cell, were there any officers in that hallway out the - - -?---Yeah.

And how many? Are you able to estimate?---Maybe two or three and one with a camera?

One with a camera?---Oh, hang on, that might have been when they searched. Hang on. Wait. Sorry.

20

You might be confused with the next day?---Yes. Might be confused with the next day's - - -

But you might have seen two or three. Is that in addition to those inside the cell?---Yeah.

And were they junior officers or more senior officers, do you recall?---Well, there was no stars if that's what you mean. Like, no pippers, so - - -

You didn't see any pippers?---No, not there, no (not transcribable)

30

Was there a dog?---There was a dog but I'm not sure if that was the next day or that day. I can't recall. It might have been the next day there was a sniffer dog.

Is your memory of the two days a little unclear?---Yeah, it's a bit vague, yeah. Not, not, not, to, to the days that it happened and that, yeah. Like, I know exactly what happened and when it happened, like, believe you me. I'm not silly. It's just the days, like, from all the drugs, and my mum's passed away since then too and, like, yeah. Like, I know, yeah. Last time I gave evidence too I got the days mixed up as well.

40

Now, did you see what – you said you got a sneaky look earlier, I think, and you saw [REDACTED] Where did you see him?---He's my cellmate.

No, but was he - - -?---Oh, yeah, when they, when they were dragging him. As he come out the door with his hands behind his back. Like, well, like, side-on like that. Well, like, like that.

And was he walking by himself or - - -?---No, no, he had his hands behind his back and the officers had him by the, like, scruff of the neck and the handcuffs, walking him.

And did you see where he went or you weren't able to see?---Oh, just across this, like, across that way.

Into another cell or down the hallway?---I'm not sure. They told me not to move my head.

10

THE COMMISSIONER: He was walked away from you?---Yeah.

MR DUGGAN: Now, did you have a good eye on the dog at any point? ---No.

Did you hear the dog?---Yeah, I could hear a dog, yeah.

And what was the dog doing?---I don't know.

20 Was it barking?---Yeah, maybe. I think so. I can't recall.

Now, you're close to the door there that leads out to the compound.---Yeah.

Where you were kneeled up against the wall. You didn't see the officer with the dog go out that door, I assume?---No.

30 Did you hear anything else after – I'm talking about after you heard [REDACTED] saying, "No, it wasn't me. I didn't do it," in the cell and some thuds and you've seen him go past. Did you hear anything coming from his direction after that?---No. No.

You don't recall?---No.

You don't recall or, no, you didn't?---Not that I recall, no.

When you say you heard some thuds coming from the cell, what did they sound like?---Like someone being bashed.

40 But are you able to describe that further?---I don't know. Like, how, I don't know what you - - -

Are you talking about yelling or are you talking about something else? ---Both. Like, yelling. Like, "Tell your," like, like, "Tell your mum to stop fucking ringing the gaol," and, like, just throwing around. Like, imagine throwing you up against the wall or something. Like - - -

All right.---I don't know how you expect me to explain that, sorry.

That's all right.

THE COMMISSIONER: That's okay. I don't know what Mr Duggan had in mind either.

MR DUGGAN: Now, eventually [REDACTED] came back?---Yeah, that night.

10 And did you have a conversation with him?---Yeah.

Was he a bit upset with you?---Oh, yeah, a little bit. Can't blame him, I suppose.

And did he look healthy and well or not so good?---No.

What do you remember?---He had a fat lip and a black eye and, like, bruising on the neck and the face maybe.

20 And did you have a conversation about how that had happened?---Yeah.

What was said, do you remember?---He said the squad fucked him up.

The squad fucked him up?---Yeah.

Yes. Did he ask you about the television, do you recall?---Yeah, I think so, yeah. He goes, "Where did you get that from?" And I - - -

What did you say?---I said, "They just brought it about 10 minutes ago."

30 Now I want to ask you some questions about the next day. Do you recall that some officers attended your cell for a search?---Yeah.

And do you recall that [REDACTED] was taken out of the cell?---Yeah.

And taken somewhere?---He might, yeah, yeah, I thought he might, I thought he was, had a visit but he might have been taken out first. 'Cause I was taken out and put in a phone box. He might have been taken out and put into another cell. I don't recall exactly where he was.

40 Was he taken out first? Is that what you remember?---Yeah.

I might just take you back to Exhibit 51 if I can. It's page 7. When you say a phone box - - -?---That's it.

- - - you're talking about that cage?---Phone cage, yeah.

And usually the cage is used, I assume, so that inmates can make a phone call.---Yeah.

And they're locked in for that purpose.---Yeah.

But you say you were taken out and locked in there, do you?---Yeah.

Do you remember whether that was before or after you were searched?---It was before.

10 So you're put in the cage and Mr [REDACTED] is off somewhere else.---Yeah.

Do you remember whether the cell door was locked or - - -?---What, what do you mean?

Of your cell. Was your, there was no - - -?---Before they, before the officers came?

Yes, so there was no – sorry, I've asked that question badly. So you're in the phone cage?---Yeah, and the cell door's open.

20 Mr [REDACTED] is somewhere else and the cell door is open, is it?---Yeah.

Did you see any people coming and going into that cell?---Yeah, the squad.

The squad?---Mmm.

You saw vests, did you?---Yeah, and one of them was out the front with a camera.

30 And do you recall [REDACTED] being there at that point?---No, I don't recall. I don't think he was.

And were you handcuffed inside the phone cage?---I think so. I can't recall. I think so. I might have been.

You can't see inside the cell, I assume, from the phone cage?---No, not, no. Not all the way. I can see the door open and just inside. Not, basically, no, I can't.

40 So were you aware as to whether there was a search going on inside the cell when you were in the phone cage?---Yeah.

So what could you see?---Oh, I could just see officers walking in and out with our mattresses and our tubs and just everything in the room, and just throwing it outside.

Did you recognise any of those officers?---Yeah.

You did?---Yeah.

Do you know any of their names?---No. Oh, except for that Tex. I'm pretty sure he was there (not transcribable). Yeah, Tex.

All right.---Walker.

So you think Mr Walker was there inside the cell with the search?---Yeah.

10 But whoever was there, they were bringing some stuff out and putting it into the hallway area.---Yeah.

Is that what you call it, the hallway?---Yeah, the, yeah.

And they were obviously doing a search?---Yeah.

Do you know if they found anything?---I believe they found something in a puffer when, that was out in the hall.

20 Did you hear anything?---Yeah, "Find, find, find." Or yeah, "We've got a find, we've got a find."

And did they ask you whether it was yours? Do you remember?---Yeah. I think, oh, they might have just said do I own a puffer?

All right. And do you remember what you said?---I said, "Yeah, I do."

All right. Did they ask you about whether what they found in the puffer was yours?---I can't recall. I think they did but I can't recall.

30 All right. You know what bupe is, do you?---Yeah.

Have you ever been on a prescription for bupe?---Not in gaol. Yeah, prior I have.

And methadone?---Yeah, yeah. Oh, yeah.

40 All right. And when you were in segregation, did you have any withdrawals?---No. I wasn't on it then, I wasn't on it in, when I was in segro. I was only on the bupe on the outside.

All right. Was a urine sample taken from you after they found something in the puffer, do you recall?---I can't recall. No, can't recall sorry.

I think I did ask you a moment ago, but just to clear up, you were asked if, the drug they found in the puffer was yours?---Yeah.

Was it?---No.

THE COMMISSIONER: Mr [REDACTED] was an asthmatic too?---Yep.

Yes. And we know that the incident involving some use of force on the 19th, occurred on the 19th and the search for drugs occurred on the 20th. Do you recall whether, between, the 19th and the 20th, an office came along and asked for [REDACTED] puffer?---No. I don't recall.

Thanks.

10 THE WITNESS: Oh, yes, I do. Sorry. I do. When, after they took him, they came to my door and said, "Your cellmate's puffer." And he, far as I was, as far as I knew, he kept his because I'm an asthmatic but I only need mine when needed. Like, I haven't used a puffer in over 12 months, 13 months and he kept his beside his bed and, but he had others as well. Yeah. And yeah, about 10, maybe 20 minutes after the incident, they came and said, "Your cellmate's puffer."

THE COMMISSIONER: The incident being the one where he was
bashed?---Bashed, yeah.

20

Do you remember which officer did that?---No. I don't, sorry.

Sorry, Mr Duncan,

MR DUGGAN: No, thank you, Commissioner for – sorry, I just, I just missed a little bit of that evidence. So, I think you've said that someone came to get [REDACTED] puffer?---Yep.

And you gave it to them?---Yep.

30

And you can't recall who that person was?---No.

Do you recall someone coming after that?---After they got the puffer?

Yes.---No.

Looking for his puffer?---Somebody, an officer came and said, "Your cell mate's puffer." I give him, and they left with the puffer. Do you mean after that?

40

Yes.---No. I don't recall. So, do you, are you saying two officers came and asked for the puffer?

Well, I'm just trying to get your recollection but yes, I'm talking about a second officer coming.---No. Not that I recall. There could have been. I don't know.

And, Mr [REDACTED] have you heard the term “cell therapy” or “therapy?”---
Yeah.

What does that mean to you?---Oh, just takin’ buy-up forms um, thrashin’
the cell, like tipping ashtrays in your pillows and open jams and putting ‘em
on our bedsheets and takin’ our towels and not giving us new ones, not
letting us mop our cells down, yeah, just, I don’t know, taking our, leaving
the TV and the cord in the cell but taking the co-ax cable so we’re sitting
there watching nothing, got a blank screen, can mean a lot of things really.

10

All right. And are you talking about this from inmates and officers or, or
what?---Just, oh, I don’t know, just all the (not transcribable) I suppose, just
you hear it around the tracks, like it’s therapy.

And have these things occurred to you?---Yeah.

And it’s officers that have done it?---Yeah, it can only be officers that do it,
like, inmates wouldn’t do that to each other.

20 THE COMMISSIONER: And is it done as a result of somebody mucking,
a prisoner mucking up?---Hey, sorry?

Is it done when an inmate mucks up, they come in and do it, or it can be
done - - -?---It can be done anytime.

Right.---Mmm.

MR DUGGAN: Is it common in your experience?---Yeah.

30 And have you seen it done to other inmates, not just yourself?---Yeah.

Now, I don’t want you to tell me what correctional centre you’re in at the
moment, but you haven’t always been in Lithgow?---No.

How many different centres would you have been in in New South Wales?
---About 10.

About 10?---Yeah.

40 And has this practice occurred - - -?---Each one of them.

In each one of them?

THE COMMISSIONER: Each one of them?---Each and every one of
them.

MR DUGGAN: Some are better than others, I assume?---Yeah.

But this practice happens all over?---Yeah.

Is this sort of stuff issued as a punishment ever for some sort of misdemeanour?---Taking the TV might be, yeah, like, or when we had cigarettes, like smoking in the wing, they'd probably take your TV or the co-ax cable, wearing a white singlet in some gaols during certain hours, like before 3 o'clock, they can do that, not thrashin' your cell, like it's not a punishment that I know of, they just do that for fun.

10 All right. When there's some sort of misdemeanour that's not reported to the police, do you usually have to sign something to say that there's been a misdemeanour?---No.

All right.---Oh, a charge you mean, if you get gaol charged?

Yes.---Yeah, you plead guilty or not guilty, yeah, and you sign it, yeah.

All right. So the incidents that you're talking about, is that part of that process or are you just saying this happens generally?---No, oh, the therapy?
20 No, you don't have to sign nothing for that, it just happens, but if I was to get charged for something like smoking in the wing, then I have to sign on saying I'm guilty or I'm not guilty or - - -

Right.

THE COMMISSIONER: You mentioned your buy-up, they take your buy-up.---Yeah, take your buy-up form, like.

30 And what effect does that have?---You don't get a buy-up, you starve for the week or you've got to shower with no thongs, like, if I've just, like, if you've just came in, shower in a bloody tinea-infected shower, just, yeah.

Okay. Thanks.

MR DUGGAN: Just going back to the puffer issue. I want to suggest to you that after you gave the puffer to another officer, to an officer, that two other officers later came back and said to you, "Do you know where his puffer is?" Words to that effect.---Mmm.

40 And you said some words to the effect, "Someone else has already taken it, chief."---(not transcribable)

Do you remember that or not?---No, not really, but I'm not saying it didn't happen.

Commissioner, can I tender Mr [REDACTED] compulsory examination which is dated 6 March, 2018?

THE COMMISSIONER: We'll make that Exhibit 66.

**#EXH-066 – TRANSCRIPT OF OP ESTRY COMPULSORY
EXAMINATION OF INMATE B HELD ON 6 MARCH 2018**

10 MR DUGGAN: And if the particular suppression order can be lifted in relation to that.

THE COMMISSIONER: Yes, the suppression order I previously made is revoked.

**VARIATION TO SUPPRESSION ORDER: SUPPRESSION ORDER
MADE PREVIOUSLY IS REVOKED**

20 MR DUGGAN: Commissioner, at the moment I have – oh, sorry. Sorry, I missed the number of the exhibit, that's all. I wasn't sure whether - - -

THE COMMISSIONER: 66.

MR DUGGAN: Thank you, Commissioner. Commissioner, I have no further questions at this point for this witness. We started a little late. I'm in your hands as to whether or not you want to take the morning - - -

30 THE COMMISSIONER: I think we'll just find out who wants to ask questions. Did you want to ask some questions, Mr Madden?

MR MADDEN: No, no, Commissioner.

THE COMMISSIONER: What about you, Mr Willis?

MR WILLIS: No, Your Honour.

THE COMMISSIONER: Mr Dunne?

40 MR DUNNE: I just have one short one which would be good to ask now.

THE COMMISSIONER: Okay. You go for it.

MR DUNNE: Mr [REDACTED] my name is Dunne and I appear for the Intel officer Mr McMurtrie of Lithgow.---Yeah.

A few moments ago – within probably the last 10 minutes – you were asked a question about [REDACTED] puffer.---Yeah.

And the note that I have of your response was, "He kept his by his bed."
---Yeah, one of them. One of them.

That's right. "But he had others."---Yeah.

So he had more than one puffer in his cell?---Yeah.

10 And did he have more than one, to your knowledge, on the 20th, which is the day – 20th of February, 2014 – which is the day of the search following the cell therapy the day before, if I can call it that?---Yeah.

Are you telling the Commission, to your knowledge, Mr [REDACTED] had more than one puffer in his room?---Yeah.

Do you know how many puffers he had in his room?---No, I don't. I had more than one puffer myself.

20 I see. And the day – sorry, just correct me if I'm confusing you here – it was the day before, which was the 19th of February, that some officers came and asked for [REDACTED] puffer?---Yeah.

And am I correct in assuming you gave him the puffer by his bed?---Yeah.

That's right. But to your knowledge he had other puffers in his room on the 19th?---Yeah, yeah, we both did.

30 Both did. And you had more than one puffer, sorry, he had more than one puffer the following day in the cell, which was the 20th of February, is that right?---Yeah.

Thank you.

THE COMMISSIONER: Anyone else?

MR HARRIS: No, thank you.

MR GREENHILL: I do.

40 THE COMMISSIONER: Okay. Okay, you go next, Mr Greenhill.

MR GREENHILL: Sir, from the time that the officer you spoke to on the radio or intercom - - -?---Intercom.

- - - system and said to you, "Do you know who you are talking to?" from that moment until you saw Jane, how long was that?---Until I saw Ms Jane?

Yes.---Oh, maybe 10 minutes max.

And so far as the officers who participated in removing you from the cell, you say, do you not, that one of them was a normal officer, not in a black vest?---Yeah.

Were they all in black vests or one or - - -?---No. No, there was three in black vests and one or two that weren't.

10 How many officers removed you from your bed?---Two.

And were they normal officers? That is, not in vests?---From what I recall, one of them was in a vest and one of them wasn't.

And did both of them take hold of you to get you off the bunk?---Yeah. Yeah.

Or did one?---Both of them reefed me off it.

20 You sure about that?---A hundred per cent.

And you've given evidence under a compulsory examination – that was earlier this year, on 6 March, wasn't it?---Yeah.

Before a lady commissioner?---Yeah.

Do you recall that?---Yeah.

30 And you also made a record of interview with Mr Glasheen and Mr Mark Farrell back in March 2015, correct?---Yeah.

And at no time during either of those interviews did you ever say that you heard any of the officers say, "Tell your mum to stop fucking ringing the gaol"?---I wasn't asked.

You've never mentioned that once before, have you?---I wasn't asked and to tell you the truth, it only just crossed me mind and he's the first person to ask me if anything was said that I can recall.

40 That evidence you just gave then, that you weren't asked is untrue, isn't it?

THE COMMISSIONER: Well, he didn't quite say that. He said he wasn't asked and he only just recalled it. I'm happy for you to put that proposition to him but I just wanted to - - -

MR GREENHILL: To say that you weren't asked as to what was said - - -? ---Okay, I'll rephrase that. I'll, that I can recall that someone, the first time they'd asked me if I'd heard what, like, what was said. Like, if anyone said anything. That's - - -

Was today, you mean?---Yeah.

Well, see that's not true, is it?---What do you mean, Mr - - -

See, you were asked this on, you were asked this on 6 March this year.
Excuse me. This was before the lady commissioner earlier this year.
---Yeah. I remember the date very well.

10 Do you?---Me mother died that day.

Oh, I'm sorry to raise it on that day but look, what you told that lady commissioner at page 270, line 20, "And could you hear any of the officers say anything or could you only hear [REDACTED] say, 'I didn't do it'?" "Oh, I can't recall any of the officers saying anything. I can only, I can only just, [REDACTED] yeah." That's what you told that Commissioner, wasn't it?---Yeah, that's right and as I just told you I just remembered today about, "Tell your mum stop fucking ringing the gaol."

20 Four years after the event?---Four years after the event. What do you expect me to say?

I expect you to tell the truth.---I am telling the truth.

And I'm curious about then the TV was dropped off.---Yep.

Was it before [REDACTED] came back to the cell or after?---It was after, before.

Which?---Before.

30

Before he came back. Do you remember when you gave evidence before the lady examiner, you said it was half an hour after [REDACTED] got back.---No, I don't remember that.

"He dropped the TV off."---I don't recall that.

Don't recall it. Thank you, Mr Commissioner.

40

THE COMMISSIONER: Thank you, Mr Greenhill. Mr Taylor?

MR TAYLOR: Thank you, Commissioner. Just one issue, I'll be brief. Mr [REDACTED] my name's Taylor. I appear on behalf of Officer Walker.---Yep.

I want you to turn your mind back to the evidence you gave in response to the questions you were being asked by Counsel Assisting about the search on 20 February, 2014 and I think your evidence is that you thought Tex Walker was there?---Yep.

Do you have a specific recollection of that or - - -?---No, I don't.

No. It's quite possible he wasn't there?---Yeah. Quite possibly.

In that [REDACTED], that was of the search day?---Yeah.

10 Did you recognise Mr Walker on that footage?---I can't remember actually. I was too, too worried about them showing my face.

O.K. And in relation to the officer who were there on 20 February, did they all look alike or similar?---Oh, I don't know. I don't know how you explain me to explain that. No, not really. Like, one was oldish, one was young. I don't - - -

I want to put it to you that Mr Walker just wasn't there on that day. Would you agree that's possible?---Yeah, it's possible.

20 Yes. Thank you. Thank you, Commissioner.

THE COMMISSIONER: Anyone else?

MALE SPEAKER: No, thank you.

THE COMMISSIONER: No. What about you, Mr Duggan, have you got anything that arises?

30 MR DUGGAN: If I might just have one moment. There is something that's popped into my head.

THE COMMISSIONER: Yes, certainly. We're almost finished.

MR DUGGAN: No, there's nothing further, thank you, Commissioner.

THE COMMISSIONER: Nothing further.

40 Thank you very much, Mr [REDACTED] for your evidence, and I'm going to adjourn now and so your evidence is finished and you, I was going to say you're free to go, but obviously you're not, but you'll be looked after by whoever brought you down here today, they'll take you back.---Yeah.

All right. And once again I stress to you that if anything like what happened to you the other day about knocking on the door and Lithgow, either through a corrections officer or an inmate, you feel that you are being threatened or punished in any way because you gave evidence here, I really do want to know about it.---Right.

[REDACTED]

DIRECTION PURSUANT TO [REDACTED] OF THE ICAC ACT

[REDACTED]

10

THE COMMISSIONER: And I can flag that I [REDACTED]
[REDACTED]

MR DUGGAN: Commissioner, there may have been a reference to 2014.

MR BRASCH: Yes, there was.

20

THE COMMISSIONER: No, 2018 I think it was.

MR BRASCH: Yes. I noticed it to be, although I'm not sure about the dates. [REDACTED]

THE COMMISSIONER: [REDACTED]

MR BRASCH: [REDACTED]

30

THE COMMISSIONER: [REDACTED]
[REDACTED]

MR BRASCH: Yes. No, as I say, would you, Commissioner, would you make a, just to ensure the integrity of the Commissioner's order, that the making of that order at this stage be suppressed?

THE COMMISSIONER: Why?

40

MR BRASCH: [REDACTED]
[REDACTED] But I am not suggesting it should remain suppressed for the continuation of proceedings, but at least at this time [REDACTED]
[REDACTED]

THE COMMISSIONER: [REDACTED] What do you say, Mr Duggan?

MR DUGGAN: I think, given that the order has not yet been made - - -

THE COMMISSIONER: I just made it. I've made the direction that I was it secured forthwith.

MR DUGGAN: I understand. Commissioner, in my submission, the prospect of [REDACTED]

THE COMMISSIONER: All right. Well, what we'll do is, I will make a suppression order i [REDACTED]

10

MR BRASCH: [REDACTED].

THE COMMISSIONER: Thank you. Being satisfied that it is necessary and desirable in the public interest to do so, I direct, pursuant to section 112 of the Independent Commission Against Corruption Act, 1988, that the direction I have just given to [REDACTED]

20

[REDACTED], not be published except by Commissioner officers for statutory purposes or pursuant to further order of the Commission.

BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT, PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, 1988, THAT THE DIRECTION [REDACTED]

30

THE COMMISSIONER: [REDACTED]

40

MR BRASCH: [REDACTED]

THE COMMISSIONER: Thank you. Yes, Mr Duggan.

MR DUGGAN: Thank you. I've lost track. Does Mr Watson need to be re-sworn? I'm not sure that happened.

THE COMMISSIONER: I think so. Yes. And I can't recall. Was it an oath or an affirmation?

THE WITNESS: By the Bible.

<ALLAN MICHAEL WATSON, sworn

[12.22pm]

THE COMMISSIONER: The section 38 direction I made continues and that's the declaration that gives you some protection, provided you tell the truth. Yes, Mr Duggan

10 MR DUGGAN: Thank you, Commissioner. Mr Watson, you may recall that last time you were giving evidence, we played a video but we ended up stopping that video. We might just continue to play the video and then I'll ask some questions.---Okay.

VIDEO RECORDING PLAYED

[12.23pm]

MR DUGGAN: Can I just, I just want to replay to you just the last few seconds of that video.---Mmm.

20 And I want you to look out for – there seemed to be two white rubbish bags at the end of the day room on the right-hand side on the ground. I just want you to look out for those if we can play it again.

VIDEO RECORDING PLAYED

[12.30pm]

MR DUGGAN: Can we pause? Can you see those, there are two bags there?---Yeah.

30 Can you see there's just a touch of yellow on the left-hand side of the bottom of one?---That's correct.

VIDEO RECORDING PLAYED

[12.30pm]

MR DUGGAN: The day room is usually an empty area?---Sorry?

40 There's not usually items left lying around the day room I assume?
---Oh, if someone goes on escort or comes back their property's put out there and searched prior to going in their cell, so there could be stuff there.

All right. Do you know who put those two white bags there at the end of the cell during the search?---No.

Did you put them there?---Sorry?

Did you put them there?---No.

You made a comment at the end of that video obviously where you said, "Video ceased." You heard that?---Yes.

So as I understand the sequence of events you'd strip searched [REDACTED] strip searched [REDACTED] and then you were coming back to conduct a search of the cell. Is that right?---That's correct.

10 Why didn't you keep rolling the video tape?---I don't know. We don't usually do that, we only film when we're doing, conducting searches or moves, segregation moves.

It was a fairly important part of the search that was about to be undertaken. Would you accept that?---I'd accept that.

And not only that, there doesn't seem to be any video footage other than what you can see incidentally of the state of the cell at that point?---That's correct.

20

So just going through that sequence in a little bit more detail, you took Mr [REDACTED] out of the cell?---Sorry?

You took Mr [REDACTED] out of the cell initially?---Yes.

At the start of the search. And then you took him away to a different area and conducted a strip search?---Yes.

30 And then when you came back did it appear that someone had put Mr [REDACTED] in the cage, the phone cage?---That's where he, yeah, that's where we got him from.

Did you put him in the cage?---I don't remember. Can, is it on the video?

Well, I think, and my memory's not perfect about that video, but my understanding is that you are with [REDACTED] sorry, [REDACTED] for the period and someone else appears to have put Mr [REDACTED] in the phone cage.---That could have been possible, yeah.

40 But you're not aware of who might have done that?---No. It would be on footage though.

So maybe not this video because it might have been used at the same time as that was happening. What I'm suggesting to you is that might have been done while you were doing the strip search of [REDACTED] ---It may have been done, yeah.

Right. But is what you're saying that that procedure might have been filmed on another video camera?---If it wasn't it would be on the day room camera.

Sorry, I'm not trying to mislead you, I think it is on the camera where you put him into the cage.---Okay.

And I'm not trying to trip you up on that. All right.

10

VIDEO RECORDING PLAYED

[12.34pm]

THE WITNESS: Oh, yeah, there's the other one.

MR DUGGAN: So you can see there that, and apologies for that. Mr [REDACTED] still there in the day room, Mr [REDACTED] put in the cage, you then take Mr [REDACTED] to another area, conduct the strip search, and you come back, take Mr [REDACTED] out of the cage and then conduct the strip search.

20

---Mmm.

So there's a time where Mr [REDACTED] is in the cage and you're strip searching Mr [REDACTED]-Yes.

Is anyone conducting a search at that point of the cell to your knowledge?
---Well, as I said, I was in another area strip searching so I can't answer that.

30

Do you know whether the door was secured?---Again I can't answer that either.

Can I take you to page 41 of Exhibit 45, please. Commissioner, I might, if I may, have access to the exhibit because I intend asking the witness to mark it. Is that possible, if the witness can be shown the exhibit?

THE COMMISSIONER: Is that possible? Thanks. Mr Brasch, I should have made clear in relation to that non-publication order that it doesn't prevent you [REDACTED]

40

MR BRASCH: I understand, Commissioner. I would have assumed so.

THE COMMISSIONER: Thank you.

MR DUGGAN: So have you got in front of you, Mr Watson, a plan of Unit 5?---That's correct.

Are you able to mark on that plan, please, where you conducted the strip-search of Mr [REDACTED] ---Okay. All right. So that's 5.1, 5.2. I'm just trying to retrace my tracks.

If you really have difficulty, Mr Watson, we can play that section of the footage again.---I think that's pretty close.

All right. Excellent. I tender that document, Commissioner.

10 THE COMMISSIONER: Thank you. I think that's Exhibit 67.

#EXH-067 – MAP OF 5 UNIT AT LITHGOW CORRECTIONAL CENTRE MARKED BY ALLAN MICHAEL WATSON TO IDENTIFY ROOM WHERE STRIP SEARCH OF INMATE A WAS CONDUCTED

MR DUGGAN: All right. So you've marked with some red arrows - - -?
20 ---Just the direction that we walked, yeah. Look, I'm not a hundred per cent, but that's, I'm pretty sure that's where we went, up the other end into the dry cell.

And is that 5.2 Unit that you've gone to?---5.1, I get them mixed up, 5.1 and 5.2. Yeah, one's the protection side, one's the seg side. That's the seg, yeah.

Now, you saw the period on the footage there, obviously, where you're
30 conducting your search of Mr [REDACTED] ---Ah hmm.

And Mr Murdoch had the camera, as I understand it.---Mr Murdoch?

Mr Murdoch.---Yeah, he could have.

And Mr Dippel, was he assisting with Mr [REDACTED] socks?---He was assisting with the search with me, yeah, I do believe, on both searches.

So you recall there was a period there, an officer – you couldn't see their
40 face but they seemed to assist Mr [REDACTED] with his socks?---Yes. So, just to clarify that, before we conduct a search we'll, we'll organise who's going to lead the search, who's going to assist in the search and who's going to be on the camera. So it was my belief that Mr Dippel was helping me all the way through.

And I said yesterday there was a video 1 that I didn't show to you, where people introduce themselves, and I can indicate that Mr Murdoch introduced himself at the cameraman, if that assists.---Okay.

But I'm just trying to work out whether you have a recollection of Mr Dippel being with you to assist during the strip-search of Mr [REDACTED].---It would have been Mr Dippel, I believe.

And so do you have any knowledge of whether there was anyone at that time back in the cell conducting a search operation in relation to the cell?
---No.

10 Do you have any knowledge of whether or not the cell door was secured or unsecured at that time?---No.

And just to confirm, you had no knowledge of who took, or who put those white bags at the end of the day room?---No.

Who asked you to assist in the search on 20 February?---I don't know.

Was it possibly Mr Kennedy?---It could possibly be. Or it could be that I've just came in there for the day and jumped in.

20 Well, that's unlikely, isn't it, Mr Watson? Because you had the stab vest on.---Oh, yeah. That's correct. Sorry, yeah. So somebody would have asked, I would have known about the intel on the shiv being in the cell.

And how would you have known about the intel of the shiv?---Somebody would have informed me.

30 So, can you just explain how that process works? Are you provided with an information report or a briefing or what do you recall?---I don't recall how I found out, but those two ways or I could have turned up for parade and I could have been informed then.

Well, I assume it's probably both those ways for a search like that, when you thought there might have been a weapon in the cell. You'd have some oral briefing before you went in, I assume?---that's correct, yes.

And you may have also received an intelligence report as to why you were going in?---Oh, yep. I could possibly have.

40 And what was it about this search operation that required someone from the SOG Dog Unit to assist?---I could have just been there on the day, came in. It could have been because it was a young IAT team. There's a lot of reasons why I was there, could have been there.

Well, you were in the day room, the day before the search operation, weren't you?---That's correct.

When the incident involving Mr [REDACTED] occurred?---That's correct.

Now, you suggested yesterday that if you had to open a door to go through it, you would usually ask someone else to open a door because you had the dog. Is that right?---Yes.

Do you recall asking anyone to open the door for you when you left the day room?---No. There's a little bit of a difference going out, out of a, into an open area, I'd be more inclined to do that myself if I had to, as opposed to going into an area where I, there might be inmates around. So - - -

10 Is it possible that Mr McMurtrie asked you to assist in this search?---Yes.

But it's also possible that Mr Kennedy would have?---Yes.

Is there anyone else who might have asked you to assist?---Any of the executives, my boss. There should be a report, I should have done a covering report and it should say that there, maybe.

20 Are you aware that members of the IAT who were involved in the incident on the 19th were told that they had to stand down and couldn't assist in the search on the 20th?---I may have been but I don't recall.

You're not aware of that?---I may, no.

And Mr Graf, for example, it was indicated that he couldn't assist in the search on the 20th, you were not aware of that?---I might have been but yeah, I don't recall.

30 There were other experienced officers who could have assisted in this search, I expect?---On the day?

Yes.---There could have been.

Was it appropriate for you to be there if you'd been in the vicinity of the cell on the 19th?---If I wasn't involved in the incident, there's no reason for me not to conduct the search the next day.

40 Do you recall how you were aware that there was a security issue in relation to the search when you were required a stab vest?---That would have been the intel saying that there was a, from the phone, the phone call I'd imagine.

So are you referring to the phone call that Mr [REDACTED] made to his father?
---Yes.

And do you remember how you were made aware of that phone call being made?---No, sorry.

When you were assisting in the search, was it your understanding that you were heading up the search or that Mr Kennedy was, or someone else?---
The actual, the actual search of the inmates?

Well, if there's a distinction I'm happy for you to elaborate.---Yes, so, yeah, so somebody can be the commander and the 2IC and they can deliver the search details and the instructions, then there can be the search team and I believe I was possibly the OIC of the search team itself, so - - -

10 Does that include the search of the cell?---It would have, yes.

So you didn't consider that Mr Kennedy was the head of the search, you considered yourself to be the officer in charge?---He was in charge of the overall search, if he was running it, he's the executive officer, and I would have conducted the search.

Do you have a recollection yourself about whether you headed up the search of the cell itself?---No.

20 So you see there at the end there's – you say, "Video ceased." And there's a 10-minute gap and then there's another video which shows Mr Dippel on the ground with a puffer and he take it apart.---Mmm.

But there's 10 minutes there that we don't have on video.---Yeah.

Do you understand what I'm saying?---Yes, yes.

And I expect that there was some searching done in that 10-minute period. Are you able to fill in what you saw in that 10-minute period?---No.

30

Well, do you have any recollection about how the search of the cell was conducted?---No.

Do you have any recollection of who was inside the cell?---Ah, only other than me and Mr Dippel, there could have been a couple of others helped.

What about Mr Murdoch?---He possibly could have.

40 In terms of Corrective Services' procedure for searching a cell, you're obviously aware that there's an Operating Procedure Manual that was in place at the time?---Yes.

And there are various requirements in relation to searching?---Yeah, it's changed considerably, but yes.

And there are also certain policies that are in place in relation to SOG and searching?---Yes.

And they're not necessarily identical?---No.

In a search operation like the one on the 20th where you're assisting a search of other officers, do you consider yourself assisted by the Operations Procedure Manual or SOG's procedures?---If I'm searching with prison officers I don't need to run a video camera, if it's just SOG members, our, well, it is now, I don't know if it was then, states that we have to have a video running at all times.

10 Right. I just want to take you to the Operating Procedure Manual that was in place at the time.---Ah hmm.

And it's section 12.4, Searching Inmates in Correctional Centres. Just while that's being pulled up on the screen, are these manuals accessible to you in hard copy or do you see them on the internet or - - -?---You can get them on the internet, yeah.

20 When you're trained for your duties and have your professional education along the way, are you provided with hard copies of these policies?---I don't remember. It was a long time ago when I went through.

But even now, I mean, the policies change, obviously, so when there's a change are you provided with a new copy of, for example, section 12.4, Searching Inmates?---We're given information to, that they've changed it and we're encouraged to read them and keep, keep up to date. Yeah.

They're not uncomplicated, can I suggest, the procedures?---No. No, they're just extensive, yeah.

30 Yes, they are. So can I take you to 12.4.16. Do you see there above that, it says there 12.4.16 Cell Searching. "In targeted searches or during monthly searches the inmate is to be present whilst the cell is being searched, unless there are exceptional circumstances. At other times the presence of the inmate to witness the search is desirable but not compulsory." Do you see that?---Yes.

Now, this was clearly a targeted search.---Yes.

40 And this suggests that unless there are exceptional circumstances the inmate should be present. Do you see that?---Yes.

Now I just want to take you to the SOG policy, or standard operating procedure. So this is Standard Operating Procedure 19 of 2009. Do you see that?---Yes.

And it's initially issued in relation to the State Emergency Unit.---Ah hmm.

If you can assume from me that this was in force in 2014.---You could think so, yeah.

And I just want to take you to clause 4.5.7, which is on page 7. Now, this talks about search procedures for departmental premises, which includes correctional centres, and if you look at that clause 4.5.7 it says, "The presence of the inmate to witness the search is desirable but not necessary." Do you see that?---Where, sorry? Whereabouts is that?

10 Sorry, it's – excuse me one moment, Commissioner. Commissioner, it seems that I have a particular version of the standard operating procedure that we don't have up on the screen.

THE COMMISSIONER: Right.

MR DUGGAN: I think I suggested that these procedures are not uncomplicated. I think I've demonstrated that hopefully myself. So I might return to that topic after lunch.

20 THE COMMISSIONER: Sure.

MR DUGGAN: Can I ask the question this way perhaps? The operating procedure that I first showed you suggested that an inmate should be present for a cell search unless there are exceptional circumstances, and the procedure that I wanted to take you to suggests that it would be desirable for someone from SCU or SOG to have the inmate present but it's not necessary, and so there's a lesser test, if you like. The question I have for you is, where you are assisting the search as you were on the 20th, do you consider yourself directed by the SOG or SCU policy or the Operation
30 Procedures Manual?---I am working with and/or assisting the gaol staff, so the Operation Procedures Manual.

And were you aware that on that particular that Mr [REDACTED] and Mr [REDACTED] should have been at the cell during the search unless there are exceptional circumstances?---They're segregation inmates. They're not to be, it's two men, two to three men escorts. You'd be having two, two officers, inmates at a cell. I've never done it, I've always, it's segregation inmates are treated as segregation inmates, don't be, be careful at all times, place them in a secured location while you're conducting a search.

40 So, you consider there to be an exception to that policy because of the threat from inmates in segregation?---Yeah. I think there's, and I could be wrong, there's a local order that says that, like, if they're segregation inmates we'll place them in another area and conduct a search of their, their cell.

There was no concern about Mr [REDACTED] at this point in time, was there, once he'd been searched by you?---No. We'd searched him and wanded him so, yeah. I, I believe, it was my opinion, both inmates were clear of contraband.

But he wasn't in a particular state to be aggressive, was he, from what you could see?---Yeah. But I've been proven wrong before.

THE COMMISSIONER: I suppose too that one of the things that you were looking for was a shiv.---That's correct.

Yes.---They can secrete them in wonderful places to put.

10 MR DUGGAN: Perhaps I can ask the question this way. Was there any thought that you gave to whether or not Mr [REDACTED] needed to be present for this search?---No.

Can I take you to page 150 of Exhibit 45, please? Now, that's an email that you sent on the 20th of February, do you accept that?---Yep.

And you're sending it to Mr Dippel, McMurtrie, O'Shea and Kennedy, can you see that?---I can only see Murdoch, Kennedy and somebody Brian.

20 Oh, I see. I think there's some overzealous reacting. If you can assume from me that you've emailed this to Messrs Dippel, McMurtrie, O'Shea and Kennedy.---And who's the Brian r-i-e?

That's McMurtrie. R-i-e is the last three letters of his name.---Thank you.

And it's just attaching a document and so if you go over the page, that's a report in the form that you would usually prepare?---Yeah, that's just out general cover report sort of thing.

30 And on the last page, can I indicate that it has your name and "First Class Correctional Officer"?---I'm only on the first page.

So you can see there on the third page?---That's correct, yep.

So if we go back to the first page, you see there that you're the officer drafting the report, effectively?---Ah hmm.

To your OIC, Assistant Superintendent White. Oh, sorry, he's been redacted. I'm not sure why, but that's all right. It is on my copy.---Yeah.

40 This report, this report, oh, well, eventually go to my general manager that's on the left, but his name's taken out.

I understand. So at the bottom of the page it refers to "Contraband – unknown half tablet and white powder." Do you see that?---Ah hmm.

And if you go over the page it sets out the duties in relation to the operation that you had. Or is that duties for the day?---That's duties, that's my duties for the day.

So you refer to there "Conduct target cell search in 5.1 Unit." Do you see that?---Yeah.

And so then the incident is described. You said, "Whilst monitoring the phone calls, I listened in on a call from inmate [REDACTED] to his father." Do you see that?---Yes.

10 Do you have a recollection of listening to that and then telling others about it?---After reading this, I do.

What's that recollection?---That I listened to Mr [REDACTED] phone call.

So it says, "I contacted," further down, "I contacted IAT and made them aware of this conversation."---Yeah.

Do you remember who you contacted?---No.

20 And you informed Assistant Superintendent McMurtrie. Do you see that? ---Yes.

You said you had a short conversation with him, IAT and Mr Kennedy. Do you see that?---Yes.

Do you remember that conversation?---No.

30 Is that likely to have been down in 5 Unit, when you went down there?---It's highly unlikely it wouldn't have been down in 5 Unit because the Intel officer's in another part of the gaol and Mr Kennedy could have been anywhere, so - - -

But Mr Kennedy introduced himself on the camera as being part of the search?---Oh, that was at the briefing, yes.

Yes. So he was down there in 5 Unit?---Eventually, yeah, yeah.

And Mr McMurtrie opened the door, so he was there. And there's a reference to IAT.---Ah hmm.

40 Is it possible that that's a reference to Mr Dippel and Mr Murdoch?---That's correct.

So does that refresh your memory as to whether the conversation was down in 5 Unit or - - -?---The initial conversation about the intelligence received or the briefing? The briefing would have been down in 5 Unit but the initial conversation could have been anywhere.

So it said, "After a short conversation with Intel, IAT and MOS, Mr Kennedy, it was decided that a comprehensive search of inmate [REDACTED] and his cellmate be conducted immediately."---Yeah, so, look, I'll just let you know, after a short conversation I might have had a conversation with the Intel officer, and then IAT and Mr Kennedy may have spoken. This is just a cover, a brief covering thought for my bosses, so I, I'm not alluding to say that I went and spoke to Mr McMurtrie, then IAT, then Mr Kennedy. That may not have happened. It might have just, I'm just short-noting things.

10 Further down the page it says, do you see there's the name [REDACTED] in bold?
---Yeah.

"Was questioned about the contraband and made full admittance." Do you see that?---Yeah.

"Stating that he doesn't know what sort of drug it is but he smokes it, and he got it off another inmate." Do you see that?---Yeah.

20 Can I suggest that he didn't make full admissions? He only admitted that the puffer was his. Do you accept that?---He didn't make full admissions on camera, no.

Well, he didn't make full admissions off camera either, did he?---Yeah. If I wrote it, he probably would have.

THE COMMISSIONER: Why would he be talking off camera?---Because then they'll speak up a little bit more. Like, two grams of bupe is nothing.

30 Well, that might be, but why would he be speaking off camera?---Because I, I probably might have had a chat to him through the cell door.

MR DUGGAN: If he made those sorts of admissions you'd urine-test him, wouldn't you?---Sorry?

If he made those sorts of admissions you would urine-test him, wouldn't you?---I wouldn't personally, but yeah.

40 You would or you wouldn't?---I wouldn't. Again this is just a cover report, it's not a detailed report.

THE COMMISSIONER: Who would be responsible for having him tested?---Oh, the centre.

Sorry?---The centre would.

The centre?---Yeah, somebody in the centre, one of the - - -

But who would make the decision that there should be a urine analysis?---
Probably the Intel officer I imagine.

Mr McMurtrie.---I'd imagine so.

MR DUGGAN: It suggests there that, or your report goes on to say that
█████ stated that he "Doesn't know what sort of drug it is but he smokes
it."---Yeah.

10 I want to suggest to you that he didn't say that. Do you accept that?
---Sorry?

I want to suggest to you that he didn't say that to you.---He didn't say that?

Yes.---You can suggest it if you like.

Do you deny it?---Sorry?

20 Do you deny it?---I deny it, yeah.

Do you have any recollection of him saying that?---Oh, not four years later
but no.

So the only reason - - -?---There's no reason for me to lie in this so like, it's
just a covering report, there's no reason to telling untruths.

30 Is it possible that someone else told you that that's what he'd, that's what
the position was?---That, is it possible that someone else told me that he
said that?

So you say, "█████ was questioned about the contraband and made full
admittance, stating that he doesn't know what sort of drug it is, but smokes
it."---Yes.

Is it possible that █████ didn't say that to you directly, but someone else
told you that's what he'd said?---That's correct, yes.

Commissioner, is that a convenient time?

40 THE COMMISSIONER: Yes. So who have we got – Mr Willis?

MR WILLIS: Commissioner, I apologise for the interruption. Mr O'Shea
has family obligations over the weekend and he proposes █████
█████ and then return on Sunday afternoon. I'd ask
that he be excused from now until 10.00am on Monday.

THE COMMISSIONER: Certainly.

MR WILLIS: Thank you.

THE COMMISSIONER: Certainly.

MR WILLIS: Could I ask that my friend, thank you, Mr Madden. Could I ask that that address be suppressed, please?

10 THE COMMISSIONER: Okay. Yes. Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988 that any
20 reference to the address to which Mr O'Shea proposes to travel shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

20 **BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 THAT ANY REFERENCE TO THE ADDRESS TO WHICH MR O'SHEA PROPOSES TO TRAVEL SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.**

THE COMMISSIONER: I think that covers it, doesn't it?

30 MR WILLIS: Yes, it does. Thank you, Commissioner.

THE COMMISSIONER: Right. We'll adjourn.

LUNCHEON ADJOURNMENT

[1.08pm]